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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/896,859	06/29/2001	William Ronald Greenwood	GREN001	9031

7590

05/28/2003

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EXAMINER

ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 05/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

1

Office Action Summary

Application No.

09/896,859

Applicant(s)

GREENWOOD, WILLIAM, JR. FINAL

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-31 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7, 8, 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Green (3,730,524).

Regarding claim 1, Green shows a polo apparatus comprising a dummy horse (10) and at least one ball-receiving surface (the playing surface) located adjacent to and below the dummy horse, the ball-receiving surface being displaceable relative to the dummy horse (10).

Regarding claims 2-5, Green shows the ball-receiving surface is located on both sides and below the dummy horse (10) and it is displaceable with respect to the moving horse and the rider.

Regarding claims 7 and 8, Green shows the dummy horse (10) is displaceable and moving in a reciprocating motion (casters 48 and 50).

Regarding claims 10 and 11, Green as disclosed above further shows the speed of movement of the dummy horse (10) is a function of the speed of the ball-receiving surface or vice verse (the horse is on casters, therefore the speed of movement would have to be relative to the speed of the ball and in turn the surface it is traveling on) and would have to be directly proportional to one another.

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Regarding claim 12, Green shows the rider driving the dummy horse, and the ball-receiving surface is being driven with respect to the horse.

3. Claims 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Greenwood (5,429,515).

Regarding claim 17, Greenwood ('515) discloses a training apparatus comprising a dummy horse having a substantially rigid frame (12) and a body portion (the head 48 and neck 46) pivotally mounted on the frame (12), whereby the body portion can pivot from side to side (see column 3, lines 27-42; and column 4, lines 49-53).

Regarding claims 18 and 19, Greenwood further shows a biasing means for biasing the body portion towards a central position; wherein the biasing means comprises springs (see column 4, lines 3-16).

4. Claims 24-26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Greenwood (5,429,515). See comments for claims 17-19 and the specification and drawings in its entirety.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green (3,730,524) in view of Shanley (2,169,663).

Regarding claim 9, Green does not expressly disclose if the dummy horse simulates the movements of a real horse. Shanley shows a polo pony having a ball and an arm attached to the side of a pony, wherein when the player strikes the ball with a mallet the pony is energized in a manner simulating the gallop of a live pony (see page 1, column 1, lines 11-17). Therefore, it would have been obvious in view of Shanley to have provided a dummy horse that could simulate movements of a real pony, in order to make the game more realistic.

Regarding claim 13, Green as described above does not show the driving means to be an electric motor. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have motorized the game device of Green, since it has been held that broadly providing a mechanical or automatic means to replace manual activity, which has accomplished the same result, involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

7. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green (3,730,524) in view of Eden et al (6,093,109).

Regarding claims 14-16, Green as described above shows the game apparatus for use by two opposing teams to be used within a game area and permitting the game area to be quickly converted for other recreational purposes. However, Green does not disclose the specifics of the game area. Indoor and outdoor game areas are well known, and it is further well known for the game area/playing field to have a peripheral enclosure, and for the enclosure to be a cage or net

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in order to define the playing area and to limit the ball travel. Eden et al shows such a recreational playing area (see figure 1), and it would have been obvious in view of Eden et al to one of ordinary skill in the art to have used the game apparatus of Green in such a game area.

8. Claims 20-23, 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenwood (5,429,515) in view of Nakada (JP405076658) and Roland (FR2670127).

Regarding claims 20 and 21, Greenwood ('515) shows pressure sensors (96, 96a and 96b) positioned on the simulated horse (see column 5, lines 35-45) that respond to pressure from the whip of a rider. However, it is well known to also position pressure sensors in the feet, knee and/or hand area of the rider as shown by Nakada (JP) and Roland (FR); see attached Abstract translation respectively. The aforementioned areas are common pressure point areas for the rider to control and maneuver the horse. Therefore it would have been obvious to do so here.

Regarding claim 22, Greenwood as disclosed above show display means to indicate whether the rider is whipping in the correct area (see column 6, lines 15-33). However, Greenwood does not show the display means indicate the rider's correct posture. It would have been obvious to include a display means that could additionally detect the rider's correct posture for the modified apparatus of Greenwood, since the aforementioned feature would be extremely useful for a novice rider.

Regarding claim 23, Greenwood shows the display means comprises lights (see column 6, lines 19).

Regarding claim 27 and 28, Greenwood ('515) shows pressure sensors (96, 96a and 96b) positioned on the simulated horse (see column 5, lines 35-45) that respond to pressure from the whip of a rider. However, it is well known to also position pressure sensors in the feet, knee

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and/or hand area of the rider as shown by Nakada (JP) and Roland (FR); see attached Abstract translation respectively. The aforementioned areas are common pressure point areas for the rider to control and maneuver the horse. Therefore it would have been obvious to do so here.

Regarding claims 29-31, Greenwood as modified above teaches that pressure sensors can be placed on any “critical” point on the dummy horse. The above training devices all separately and in combination show that the speed can be adjusted using a control mechanism. To additionally provide wireless connection to the feet section and the head area of the dummy horse in order to be able to manipulate the speed would have been obvious to one skilled in the art, since these two areas are considered “main areas” when riding a horse properly and it would have been obvious to do so here. A rider would press down on the stirrup with his feet and tighten up the rein when wanting to increase the speed of the horse, and would loosen up the rein and be in a more relaxed position when wanting to slow down.

Allowable Subject Matter

9. Claim 6 would be allowable if rewritten to overcome the objection, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., ball-receiving surface is movable) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In*

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re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). What is claimed is a ball-receiving surface. The cited reference shows this feature, the ball is received and positioned upon the ground or receiving surface. Applicant is not claiming the ground is movable, by indicating that the ground is displaceable with respect to the dummy horse, does not mean that the ground has to be moveable with respect to the dummy horse, rather the reverse can also be true, and since the dummy horse is positioned on the ground or the receiving surface, that means the receiving surface is on either side of the dummy horse, and since the dummy horse is moveable then the displacement would be in a direction substantially parallel to the fore/aft direction of the receiving surface, and the reverse would inherently be true. Applicant's extensive arguments are understood, however, since the receiving surface is not being claimed as the element that is providing the motion for the dummy horse, then applicant's arguments are considered moot. The dummy horse is the moveable element here, and its direction of movement and the speed at which it travels with respect to the receiving surface and the impact imparted on the balls determining the speed at which the balls would travel, are all fully controlled by the rider. Since the dummy horse can freely move on the receiving surface then it is able to maneuver and retrieve the balls as needed.

Regarding claims 24-26 directed towards a moveable horse, applicant has merely indicated that is not appropriate, but has failed to indicate way it is inappropriate. The cited reference "Greenwood" is applicant's own invention, the invention as claimed reads on applicant's prior patent. The improvements and/or specific features that applicant is relying on are not being claimed.

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11. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

12. In response to applicant's arguments, the recitation *a polo training apparatus* and *a horse riding training apparatus* has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul T Sewell can be reached on 703-308-2126. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

MA
22 May 2003


Paul T. Sewell
Supervisory Patent Examiner
Group 3700